Docket No. 4208-4047US1

# COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is soupht on the invention entitled:

the specification of which				
a.  is attached hereto				
b. Was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended o . (if applicable).				
PCT FILED APPLICATION ENTERING NATIONAL STAGE				
c. Was described and claimed in International Application No. filed on and as amended on . (if any).				
l hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.				
l acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. $\S$ 1.56.				
I hereby specify the following as the correspondence address to which all communications about this application are to be directed:				
SEND CORRESPONDENCE TO:  ⊠ The address associated with the Customer Number  -OR-				
Address Shown (see below)				
DIRECT TELEPHONE CALLS TO: Joseph C. Redmond, Jr. (202) 857-7929				

(NC28559CIP)

	I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 355(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that or the application on which priority is claimed:				
	The attached 35 U.S.C this declaration.	. § 119 claim for p	riority for the applic	ation(s) listed below	forms a part of
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed
					□ Y □ N
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
	I hereby claim the bene below.	efit under 35 U.S.C	C. § 119(e) of any U.	S. provisional applic	ation(s) listed
	Provisional A	pplication No.	Date of filing (	day, month, yr)	
	CONT OR PC	TINUATION OR FAPPLICATION	MENTS FOR DIV CONTINUATION N(S) DESIGNATIN	I-IN-PART IG THE U.S.	
hereb inder §	y claim the benefit under 365(c) of any PCT inter	r Title 35, United : rnational applicati	States Code § 120 of on(s) designating the	any United States age U.S. listed below.	oplication(s) or
	Ser. No. 10/105,320 T Application Serial No.	March 26,		(6,892,052 B2, issu	
JS/PC	1 Application Serial No.	Filing Date		patented, pending, ab on no. assigned (For	
JS/PC	T Application Serial No.	Filing Date		oatented, pending, ab on no. assigned (For	
	In this continuation-in- application is not discle application(s) in the ma 112, I acknowledge the Federal Regulations, § and the national or PCI	sed in the above lanner provided by duty to disclose n 1.56(a) which occur	sofar as the subject sted prior United St he first paragraph o aterial information a urred between the fil	matter of any of the cates or PCT internati f Title 35, United Sta as defined in Title 37 ing date of the prior	claims of this onal tes Code, §

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

X	Practitioners associated with	the Customer Num	iber	27123	3	
-OR-			_			_
	Practitioner(s) named below:					
	Name			Registration	Number	
	☐ I hereby authorize the U.S. attorneys and/or agents named hereinabove to accept and follow instructions from as to any action to be taken in the U.S. Patert and Trademark Office regarding this application without direct communication between the U.S. attorneys and/or agents and me. In the event of a change in the person(s) from whom instructions may be taken I will so notify the U.S. attorneys and/or agents named hereinabove.					k Office and/or agents
Full n	ame first joint inventor:	Sakari KOTOL	A			
Inven	tor's signature*	Eccame i		~e.	14,11.	2006
Resid	ence:	Alppitie 10 B, 02	2700 Kau	nianen, Finland	Date	
Citize	enship:	Finland				
Post	Office Address:	Same as above.				
Full r	name of second joint inventor:	Holger HUSSMA	NN			
Inver	ntor's signature*				Date	
Resid	lence:	Satakunnankatu	22 E 125,	33210 Tampere,		
Citiz	enship:	Germany				
Post	Office Address:	Same as above				
×	ATTACHED IS ADDED PAG	E TO COMBINED	DECLAR.	ATION AND POW	ER OF AT	TORNEY FOR

I hereby appoint:

Docket No. 4208-4047US1

# SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*		Date
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*		
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	Date
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	Heikki HUOMO	
Inventor's signature*		Date
Residence:	Riekkotie 13, 90650 Oulu, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above	

Docket No. 4208-4047US1

\*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1,97(b)-(d) and 1,98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
  - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
  - It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

-:-

(NC 28559CIP)

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unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentiability, as defined in paragraph (t) of this section, which became available between the filling date of the prior application and the National or PCT international filling date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in-
  - an application for patent, published under section 122(b), by another filed in the United States

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before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such persons invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such persons invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 10.2 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - A patent issued on a process under paragraph (1)—
    - (A) shall also contain the claims to the composition of matter used in or made by that process,
    - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means-

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- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism
  - (i) express an exogenous nucleotide sequence,
  - iii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - (iii) express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

#### Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regislarly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such spot papil cation in this country is filed within twelve months from the earliest date on which shad been application for patent for an invention which had been a patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing the part of the actual filing of the application in this country.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
  - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
  - (3) The Director may require a certified copy of the original foreign application, specification, and

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drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the namer provided by the first paragraph of section 112 of this title in a provisional application filed inder section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application 363 of it contains or is amended to contain a specific reference to the provisional application application shall be entitled to the benefit of an artier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director and consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection.
  - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
  - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
  - the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2)
    of this title; and
  - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

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Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this tille in an application previously field in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, at so uch invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application will applicate the application and application and the section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application is streptized by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment and this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. 4208-4047US1

# COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specific	ation	of which		
a.		is attached hereto		
b.	$\boxtimes$	was filed on March 19, 2004 as application Ser (if applicable).	ial No. 10/804,081	and was amended on
		PCT FILED APPLICATION ENTERING N	NATIONAL STAC	<u>;e</u>
c.		was described and claimed in International Appas amended on . (if any).	lication No.	filed on and
		I have reviewed and understand the contents of ms, as amended by any amendment referred to a		d specification,
I acknowled § 1.56.	dge the	e duty to disclose information which is material t	o patentability as d	efined in 37 C.F.R.
I hereby speaplication		he following as the correspondence address to w be directed:	hich all communica	tions about this
SEND COR	RESPO	ONDENCE TO:		
-OR-	The a	address associated with the Customer Number	2712	23
	Addr	ess Shown (see below)		
DIRECT TI	CLEPH	IONE CALLS TO:		
		edmond, Jr.		
(202)	857-7	929		

77368 v1

	Docket No. 4208-4047US1  I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed:  The attached 35 U.S.C. § 119 claim for priority for the application(s) listed below forms a part of				
	The attached 35 U this declaration.	.S.C. § 119 claim for	priority for the appli	cation(s) listed below	forms a part of
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
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	I hereby claim the below.	benefit under 35 U.S.	C. § 119(e) of any U	J.S. provisional applica	ation(s) listed
	Provision	al Application No.	Date of filing	(day, month, yr)	
		DDITIONAL STAT			
		PCT APPLICATION			
		inder Title 35, United international applicat		of any United States ap ne U.S. listed below.	plication(s) or
Apple	1. Ser. No. 10/105,320	March 26	2002 Patente	d (6,892,052 B2, issue	rd May 10, 2005)
	CT Application Serial		te Status	patented, pending, abation no. assigned (For	andoned)/ U.S.
			аррпса	tion no. assigned (For	rcij
US/P	CT Application Serial	No. Filing Da		patented, pending, aba tion no. assigned (For	
application no. assigned (For PCT)  In this continuation-in-part application, insofar as the subject matter of any of the claims of this application is not disclosed in the above listed prior United States or PCT international application(s) in the manner provided by the first paragraph of Title 35, United States Code, § 112,1 acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.					onal tes Code, § , Code of

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

X	Practitioners associated with	h the Customer Number	27123	
-OR-				
	Practitioner(s) named below	r:		
	Name		Registration Number	
	instructions from as t regarding this application w	o any action to be taken ithout direct communica	amed hereinabove to accept an in the U.S. Patent and Tradema tion between the U.S. attorneys	rk Office and/or agents
	and me. In the event of a ch notify the U.S. attorneys and			iken I Will so
Full n				iken I will so
	notify the U.S. attorneys and	d/or agents named hereir	above.	iken I will so
	notify the U.S. attorneys and ame first joint inventor: tor's signature*	d/or agents named hereir	above.	aken I will so
Inven	notify the U.S. attorneys and ame first joint inventor: tor's signature*	d/or agents named herein Sakari KOTOLA	above.	aken I will so
Inven Resid Citize	notify the U.S. attorneys and ame first joint inventor: tor's signature*	Alppitie 10 B, 02700	above.	aken I will so
Inven Resid Citize Post (	notify the U.S. attorneys and ame first joint inventor: tor's signature* ence: enship:	Alppitie 10 B, 02700 Finland	above.	aken I will so
Inven Resid Citize Post C	notify the U.S. attorneys and ame first joint inventor: tor's signature* ence: enship:	Alppitie 10 B, 02700 Finland Same as above.	Date Kaunianen, Finland	11 O6
Inven Resid Citize Post C	notify the U.S. attorneys and ame first joint inventor: tor's signature* ence: mship:  Office Address: ame of second joint inventor: tor's signature*	Alppitte 10 B, 02700 Finland Same as above.  Holger HUSSMANN Safekungsinkatu 23-P.	Date Kaunianen, Finland  Jo Date 125-33210 Tampere, Finland	11 06
Inven Resid Citize Post C Full n Inven Resid	notify the U.S. attorneys and ame first joint inventor: tor's signature* ence: mship:  Office Address: ame of second joint inventor: tor's signature*	Alppitte 10 B, 02700 Finland Same as above.  Holger HUSSMANN Safekungsinkatu 23-P.	Maunianen, Finland  Date  Mo Date	11 06

I hereby appoint:

# SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM. Docket No. 4208-4047US1

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*		
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*		
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	Date
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		Date
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	Heikki HUOMO	
Inventor's signature*		
Residence:	Riekkotie 13, 90650 Oulu, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above	
Inventor's signature*  Residence: Citizenship:	Riekkotie 13, 90650 Oulu, Finland Finland	Date

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Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
  - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
  - It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - Asserting an argument of patentability. A prima facie case of unpatentability is cstablished when the information compels a conclusion that a claim is

-i-

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unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in-
  - (1) an application for patent, published under section 122(b), by another filed in the United States

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before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such persons' invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such persons' invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

#### Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in accion 102 of this title, if the difference between the subject matter sought to be patented and the prior at are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - A patent issued on a process under paragraph (1)—
    - (A) shall also contain the claims to the composition of matter used in or made by that process, or
    - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means-

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- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism to--
  - express an exogenous nucleotide sequence,
  - inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section [10 2 of this title, shall not preclude partentiability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

#### Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, lift eapplication in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year perior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
  - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
  - (3) The Director may require a certified copy of the original forcign application, specification, and

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drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent of or an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application self filed and if it contains or is amended to contain a specific reference to the provisional application was filed and if it containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a survalers, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
  - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41a(1) of this title has been paid.
  - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
  - the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
  - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

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Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or a sprovided by section 363 of this title, which is filed by an inventor or inventors as mend in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the placent go abandoment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application or an amended to contain a specific reference to the earlier filed application in a specific reference to the earlier filed application and entities the section unless an amendence of the application is a positive reference to the earlier filed application is about the formal production of the production of t

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

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# COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specification of which					
a.  is attached hereto					
b.  was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable).					
PCT FILED APPLICATION ENTERING NATIONAL STAGE					
c. was described and claimed in International Application No. filed on and as amended on . (if any).					
I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.					
$1$ acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. $\S~1.56$ .					
I hereby specify the following as the correspondence address to which all communications about this application are to be directed:					
SEND CORRESPONDENCE TO:  The address associated with the Customer Number 27123					
Address Shown (see below)					
DIRECT TELEPHONE CALLS TO: Joseph C. Redmond, Jr. (202) 857-7929					

(NC28559CIP)

	Docket No. 4208-4047US1  I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(h) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed:  The attached 35 U.S.C. § 119 claim for priority for the application(s) listed below forms a part of				
П	The attached 35 U.S	.C. § 119 claim for	priority for the appl	ication(s) listed below	forms a part of
	this declaration.	Application	Date of filing	Date of issue (day, month, yr)	Priority Claimed
	Country/PCT	Number	(day, month, yr)	(02),	$\square$ Y $\square$ N
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
П	Lharaby claim the h	nenefit under 35 U.S	S.C. § 119(e) of any	U.S. provisional applic	ation(s) listed
Ш	below.				
	Provision	al Application No.	Date of filin	g (day, month, yr)	
	OR OR	ONTINUATION OF PCT APPLICAT	TEMENTS FOR ON CONTINUATION(S) DESIGNA	TING THE U.S.	Poster(A) as
1 he und	reby claim the benefit ler § 365(c) of any PC1	under Title 35, Unit international appli	ed States Code § 12 cation(s) designatin	0 of any United States g the U.S. listed below.	аррисалоп(s) от
Ap US	pln. Ser. No. 10/105,32 /PCT Application Seria		Date Stat	ented (6,892,052 B2, iss us (patented, pending, lication no. assigned (F	abandoned)/ U.S.
US	/PCT Application Seri	al No. Filing	Date Star	tus (patented, pending, dication no. assigned (F	abandoned)/ U.S. or PCT)
	application is not application(s) in 112, I acknowled	disclosed in the about the manner provided ge the duty to disclose 1.56(a) which	by the first paragra	oject matter of any of the d States or PCT internaph of Title 35, United tion as defined in Title the filing date of the pripplication.	States Code, § 37, Code of

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

heret	oy appoint:			
X	Practitioners associated with th	e Customer Numbe	27123	
-OR-				
	Practitioner(s) named below:			
	Name		Registration Number	
I hereby authorize the U.S. attorneys and/or agents named hereinabove to accept and follow instructions from as to any action to be taken in the U.S. Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and/or agent and me. In the event of a change in the person(s) from whom instructions may be taken I will so notify the U.S. attorneys and/or agents named hereinabove.				
Full	name first joint inventor:	Sakari KOTOLA		
Inve	entor's signature*		Date	
Res	sidence:	Alppitie 10 B, 027	2700 Kaunianen, Finland	
Citi	izenship:	Finland		
Pos	st Office Address:	Same as above.		
Ful	Il name of second joint inventor:	Holger HUSSMAI	ANN	
Inv	ventor's signature*		Date	
Re	sidence:	Satakunnankatu 2	122 E 125, 33210 Tampere, Finland	
Ci	tizenship:	Germany		
	ost Office Address:	Same as above		
	ATTACHED IS ADDED PAGE	GE TO COMBINED	DECLARATION AND POWER OF ATTORNEY FO	

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SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

5101	
Full name third joint inventor:	Carmen KÜHL
Inventor's signature*	17th Nev 300-6
Residence:	Plauener Str. 2, 44139 Dortmund, Germany
Citizenship:	Germany
Post Office Address:	Same as above.
Full name of fourth joint inventor:	Peter WAKIM
Inventor's signature*	Date
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland
Citizenship:	Australia
Post Office Address:	Same as above
Full name fifth joint inventor:	Petri VESIKIVI
Inventor's signature*	Date
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland
Citizenship:	Finland
Post Office Address:	Same as above.
Full name of sixth joint inventor:	Heikki HUOMO
Inventor's signature*	Date
Residence:	Riekkotie 13, 90650 Oulu, Finland
Citizenship:	Finland
Post Office Address:	Same as above

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\*Before signing this declaration, each person signing must:

- Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37. Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
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      - Opposing an argument of unpatentability relied on by the Office, or
      - Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

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- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
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- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

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- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in accition 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - (2) A patent issued on a process under paragraph (1)—
    - (A) shall also contain the claims to the composition of matter used in or made by that process,
    - shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means-

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- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism
  - (i) express an exogenous nucleotide sequence,
  - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - (iii) express a specific physiological characteristic not naturally associated with said
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (c), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

#### Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal oppresentatives or assigns have, perviously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or oi citizens of the United States, or in a VTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year before the such as filed to the other publication in this country, or which had been in public use or on sale in this country more than one year before to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
  - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
  - (3) The Director may require a certified copy of the original foreign application, specification, and

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drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual properly authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application bas been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of provide.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (c) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an invention of inventors can amed in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application fined under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application. Subsection unless an amendment containing the specific reference to the earlier filed provisional application is unbmitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
  - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark (Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
  - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
  - (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
  - (u) As used in this section-
    - the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
    - the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

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Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously field in the United States, or as provided by section 363 of this title, which is filled by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filled before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filling date of the first application and it is contains or is amended to contain a specific reference to the earlier fill eapplication. No application when the entitled to the benefit of an earlier filled application under this section unless an amendment containing the specific reference to the earlier filled application is unwitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment whith that time period as a water of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

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# COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specific	ation o	of which	
a.		is attached hereto	
b.	$\boxtimes$	was filed on March 19, 2004 as application Series. (if applicable).	al No. 10/804,081 and was amended
		PCT FILED APPLICATION ENTERING N	ATIONAL STAGE
c.		was described and claimed in International Appl as amended on . (if any).	lication No. filed on and
		t I have reviewed and understand the contents of ms, as amended by any amendment referred to al	
I acknowle § 1.56.	dge th	e duty to disclose information which is material t	o patentability as defined in 37 C.F.R
		the following as the correspondence address to who be directed:	hich all communications about this
SEND COR	RESP	ONDENCE TO:	
-OR-	The	address associated with the Customer Number	27123
	Add	ress Shown (see below)	
DIRECT T	ELEP	HONE CALLS TO:	
		Redmond, Jr.	
(202	) 857-	.1929	

(NC28559CIP)

	§ 365(b) of any fore PCT international a and also have identi such PCT internation within twelve (12) i	ign application(s) fi pplication(s) design fied below such for mal application(s) fi nonths before that of	or patent or inventor' ating at least one cou- eign application(s) for led by me on the san f the application on	ed States Code § 119 ( is certificate or under § untry other than the U. or patent or inventor's ne subject matter having which priority is claim	365(a) of any S. listed below certificate or ng a filing date aed:
	The attached 35 U.S this declaration.	S.C. § 119 claim for	priority for the appli	cation(s) listed below	forms a part of
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed
					$\square$ Y $\square$ N
					□Y □N
					□Y □N
	I hereby claim the below.	enefit under 35 U.S	.C. § 119(e) of any U	J.S. provisional applic	ation(s) listed
	Provisiona	l Application No.	Date of filing	(day, month, yr)	
	cc	INTINUATION O	EMENTS FOR DI R CONTINUATIO DN(S) DESIGNATI	N-IN-PART	
	by claim the benefit un § 365(c) of any PCT i			of any United States ap ne U.S. listed below.	oplication(s) or
	Ser. No. 10/105,320	March 20		d (6,892,052 B2, issu	
US/PC	T Application Serial	No. Filing Da		(patented, pending, ab tion no. assigned (For	
US/PC	T Application Serial	No. Filing Da		(patented, pending, ab tion no. assigned (For	
	application is not di application(s) in the 112, I acknowledge	sclosed in the above manner provided by the duty to disclose , § 1.56(a) which on	listed prior United S the first paragraph material information curred between the f	t matter of any of the of States or PCT internati of Title 35, United States as defined in Title 37 Filing date of the prior occation.	onal ites Code, § ', Code of

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereb	by appoint:				
X	Practitioners associated with	the Customer Number		27123	
-OR-			_		
	Practitioner(s) named below	:			
	Name			Registration Number	
					_
	instructions from as to regarding this application wi	o any action to be taken thout direct communica ange in the person(s) fro	in the tion om v	ed hereinabove to accept and follow the U.S. Patent and Trademark Office between the U.S. attorneys and/or ag whom instructions may be taken I will ove.	
Full n	ame first joint inventor:	Sakari KOTOLA			
Inven	tor's signature*			Date	_
Resid	ence:	Alppitie 10 B, 02700	Kau		
Citize	nship:	Finland			
Post C	Office Address:	Same as above.			
Full n	ame of second joint inventor:	Holger HUSSMANN			
Inven	tor's signature*				_
Resid	ence:	Satakunnankatu 22 E	125,	Date 33210 Tampere, Finland	
Citize	nship:	Germany			
Post C	Office Address:	Same as above			
	ATTACHED IS ADDED PAG	E TO COMBINED DECL	AR	ATION AND POWER OF ATTORNEY	FOR

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## SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*		
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*	the Who	9th NOV 2006
Residence:	213 Commonwealth Avenue Apt 9 Boston MA	Date LISA 02216
	Australia	A USA 02216
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Full name fifth joint inventor:  Inventor's signature*	Petri VESIKIVI	Description
•	Petri VESIKIVI  Lintupiha 12 a B, 02660 Espoo, Finland	Date
Inventor's signature*		Date
Inventor's signature*  Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Inventor's signature*  Residence: Citizenship:	Lintupiha 12 a B. 02660 Espoo, Finland Finland	Date
Inventor's signature*  Residence: Citizenship: Post Office Address:	Lintupiha 12 a B. 02660 Espoo, Finland Finland Same as above.	
Inventor's signature*  Residence: Citizenship: Post Office Address: Full name of sixth joint inventor:	Lintupiha 12 a B. 02660 Espoo, Finland Finland Same as above.	Date
Inventor's signature* Residence: Citizenship: Post Office Address: Full name of sixth joint inventor: Inventor's signature*	Lintupiha 12 a B. 02660 Espoo, Finland Finland Same as above. Heikki HUOMO	

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\*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
  - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
  - It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

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unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of natenability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (t) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless -

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in-
  - an application for patent, published under section 122(b), by another filed in the United States

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before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventior involved therein establishes, to the extent permitted in section 104, that before such persons invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such persons invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time orior to concention by the other.

#### Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonbovious under subsection (a) of this section shall be considered nonobvious ifr-
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - A natent issued on a process under paragraph (1)—
    - (A) shall also contain the claims to the composition of matter used in or made by that process, or
    - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means-

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- (A) a process of genetically altering or otherwise inducing a single-ormulti-celled organism
  - express an exogenous nucleotide sequence,
  - inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - (iii) express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior at only under one or more of subsections (c), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

#### Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, consists and exact terms as to enable any person skilled in the art to which it perains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application for patent for the same invention was first filed in such foreign country, if the application in patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one very arror to such filing the same partor to such filing the s
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
  - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
  - (3) The Director may require a certified copy of the original foreign application, specification, and

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drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply at their discretion, either for a patent or for an inventor's certificates shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application, filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application subplication shall be entitled to the benefit of an earlier filed provisional application is ubsmitted at such time during the pendency of the applications as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
  - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
  - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
  - the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
  - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

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Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of retraination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

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# COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specification	of which
а. 🔲	is attached hereto
b. 🛚	was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable).
	PCT FILED APPLICATION ENTERING NATIONAL STAGE
с. 🗆	was described and claimed in International Application No. filed on and as amended on . (if any).
including the cla	at I have reviewed and understand the contents of the above-identified specification, aims, as amended by any amendment referred to above.
§ 1.56.	he duty to disclose information which is material to patentability as defined in 37 C.F.R.
I hereby specify application are	the following as the correspondence address to which all communications about this to be directed:
SEND CORRES	SPONDENCE TO: e address associated with the Customer Number 27123
	ldress Shown (see below)
	EPHONE CALLS TO: C. Redmond, Jr. 7-7929

(NC28559CIP)

	I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed:				
	The attached 35 U. this declaration.	S.C. § 119 claim for	priority for the appl	ication(s) listed below	forms a part of
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
	I hereby claim the below.	benefit under 35 U.S	.C. § 119(e) of any	U.S. provisional applic	cation(s) listed
	Provision	al Application No.	Date of filing	(day, month, yr)	
ADDITIONAL STATEMENTS FOR DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART OR PCT APPLICATION(S) DESIGNATING THE U.S.					
I hereby claim the benefit under Title 35, United States Code § 120 of any United States application(s) or under § 365(c) of any PCT international application(s) designating the U.S. listed below.					
	In. Ser. No. 10/105,320			ed (6,892,052 B2, issu	
US/F	PCT Application Seria	I No. Filing D		(patented, pending, a ation no. assigned (Fo	
US/I	PCT Application Seria	l No. Filing D		(patented, pending, a ation no. assigned (Fo	
	In this continuation-in-part application, insofar as the subject matter of any of the claims of this application is not disclosed in the above listed prior United States or PCT international application(s) in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.			tional tates Code, § 17, Code of	

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

X	Practitioners associated with	the Customer Number	27123	
-OR-				•
	Practitioner(s) named below:			
	Name		Registration Number	
I hereby authorize the U.S. attorneys and/or agents named hereinabove to accept and follow instructions from as to any action to be taken in the U.S. Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and/or agents and me. In the event of a change in the person(s) from whom instructions may be taken I will so notify the U.S. attorneys and/or agents named hereinabove.				
Full	name first joint inventor:	Sakari KOTOLA		
Inver	ntor's signature*		Date	
Resid	dence:	Alppitie 10 B, 02700 I		
Citiz	enship:	Finland		
Post	Office Address:	Same as above.		
Full	name of second joint inventor:	Holger HUSSMANN		·
Inve	ntor's signature*		Date	
Residence: S		Satakunnankatu 22 E	125, 33210 Tampere, Finland	
Citiz	enship:	Germany		
Post	Office Address:	Same as above		
N	ATTACHED IS ADDED PAG	E TO COMBINED DECL	ARATION AND POWER OF ATT	ORNEY FOR

I hereby appoint:

Docket No. 4208-4047US1

# SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Carmen KÜHL	
	Date
Plauener Str. 2, 44139 Dortmund, Germany	Dillo
Germany	
Same as above.	
Peter WAKIM	
	Date
Mikonkatu 25 A 8, 00100 Helsinki, Finland	Date
Australia	
Same as above	
Petri VESIKIVI	
	Date
Lintupiha 12 a B, 02660 Espoo, Finland	Date
Finland	
Same as above.	
Heikki HUOMO	
	Date
Riekkotie 13, 90650 Oulu, Finland	Duic
Finland	
Same as above	
	Plauener Str. 2, 44139 Dortmund, Germany Germany Same as above.  Peter WAKIM  Mikonkatu 25 A 8, 00100 Helsinki, Finland Australia Same as above  Petri VSIKIVI  Lintupiha 12 a B, 02660 Espoo, Finland Finland Same as above.  Heikki HUOMO  Riekkotie 13, 90650 Oulu, Finland Finland

Docket No. 4208-4047US1

\*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most (a) effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
  - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
  - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - Opposing an argument of unpatentability relied on by the Office, or
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Docket No. 4208-4047US1

unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
  - (1) an application for patent, published under section 122(b), by another filed in the United States

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before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time nrior to concention by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 10.2 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a blotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - A patent issued on a process under paragraph (1)—
    - shall also contain the claims to the composition of matter used in or made by that process,
       or
    - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means-

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- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism to-
  - (i) express an exogenous nucleotide sequence,
  - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - (iii) express a specific physiological characteristic not naturally associated with said
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

#### Title 35, U.S. Code § 112 (in part)

#### Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of earrying out his invention.

## Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affods similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
  - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
  - (3) The Director may require a certified copy of the original foreign application, specification, and

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drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent of ror an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicans are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 11(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title is a provisional application filed under section 11(b) of this title, a type an inventor or inventors named in the provisional application, shall have the same effect, a to such invention, se though filed on the date of the provisional application filed under section 11(b) of this title, if the application for patent filed under section 11(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application set filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection.
  - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41a(1) to this title has been paid.
  - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
  - the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
  - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

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Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or a grovided by section 363 of this title, which is filed by an inventor or inventors anmed in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and a pencific reference to the earlier filed application. No application that the entitled to the benefit of an earlier filed application instant this section unless an amendment containing the specific reference to the earlier fled application is submitted as such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. 4208-4047US1

# COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specification of which			
a. is attached hereto			
<ul> <li>was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable).</li> </ul>			
PCT FILED APPLICATION ENTERING NATIONAL STAGE			
c. Was described and claimed in International Application No. filed on and as amended on . (if any).			
I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.			
I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. $\S$ 1.56.			
I hereby specify the following as the correspondence address to which all communications about this application are to be directed:			
SEND CORRESPONDENCE TO:			
The address associated with the Customer Number 27123			
Address Shown (see below)			
DIRECT TELEPHONE CALLS TO:			
Joseph C. Redmond, Jr. (202) 857-7929			

(NC28559CIP)

	§ 365(b) of any fore PCT international ar and also have identified such PCT internation	ign application(s) for pplication(s) designated below such for all application(s) for pal application(s) for pal application(s)	or patent or inventor ating at least one cou eign application(s) for led by me on the sam	Docket No. of States Code § 119 (sertificate or under antry other than the U. or patent or inventor's ne subject matter having the priority is claim.	§ 365(a) of any S. listed below certificate or ng a filing date
	The attached 35 U.S this declaration.	.C. § 119 claim for	priority for the appli	cation(s) listed below	forms a part of
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
					$\square$ Y $\square$ N
	I hereby claim the be below.	enefit under 35 U.S	.C. § 119(e) of any U	.S. provisional applic	ation(s) listed
	Provisional	Application No.	Date of filing	day, month, yr)	
	CO	NTINUATION O	EMENTS FOR DIV R CONTINUATION ON(S) DESIGNATION	i-IN-PART	
herel inder	y claim the benefit und § 365(c) of any PCT in	der Title 35, United ternational applica	States Code § 120 o tion(s) designating th	f any United States ap e U.S. listed below.	oplication(s) or
	Ser. No. 10/105,320	March 20		1 (6,892,052 B2, issue	
JS/PC	T Application Serial N	lo. Filing Da		patented, pending, ab- ion no. assigned (For	
JS/PC	T Application Serial N	o. Filing Da		patented, pending, about no. assigned (For	
	In this continuation-in application is not disc application(s) in the r 112, I acknowledge the Federal Regulations, and the national or PC	closed in the above manner provided by ne duty to disclose § 1.56(a) which oc	listed prior United So the first paragraph of material information curred between the fi	ates or PCT internation of Title 35, United States as defined in Title 37 ling date of the prior a	onal tes Code, § , Code of

Docket No. 4208-4047US1

(NC 28559CIP)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereb	I hereby appoint:			
X	Practitioners associated with the Customer Num		27123	
-OR-				
	Practitioner(s) named below:			
	Name		Registration Number	
	I hereby authorize the U.S. attorneys and/or agents named hereinabove to accept and follow instructions from as to any action to be taken in the U.S. Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and/or agents and me. In the event of a change in the person(s) from whom instructions may be taken I will so notify the U.S. attorneys and/or agents named hereinabove.			
Full n	Full name first joint inventor: Sakari KOTOLA			
Inven	Inventor's signature*			
Residence:		Alppitic 10 B, 0270	00 Kaunianen, Finland	
Citizenship:		Finland		
Post Office Address:		Same as above.		
Full n	Full name of second joint inventor: Holger HUSSMANN			
	Inventor's signature*			
inven	nors signature		Date	
Resid	lence:	Satakunnankatu 22	E 125, 33210 Tampere, Finland	
Citize	enship:	Germany		
Post 0	Office Address:	Same as above		
<u></u>	ATTACHED IS ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR			

-3-

77368 v1

Docket No. 4208-4047US1

# SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL
Inventor's signature*	Date
Residence:	Plauener Str. 2, 44139 Dortmund, Germany
Citizenship:	Germany
Post Office Address:	Same as above.
Full name of fourth joint inventor:	Peter WAKIM
Inventor's signature*	Date
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland
Citizenship:	Australia
Post Office Address:	Same as above
Full name fifth joint inventor:	Petri VESIKIVI
Inventor's signature*	Date
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland
Citizenship:	Finland
Post Office Address:	Same as above.
Full name of sixth joint inventor:	нејки ниомо
Inventor's signature*	A fromo
Residence:	16 Church st, Meysey Hampton, Gloucester, GL7 5JX, UK
Citizenship:	Finland
Post Office Address:	Same as above

Docket No. 4208-4047US1

\*Before signing this declaration, each person signing must:

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  - (2) Each attorney or agent who prepares or prosecutes the application; and
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- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
  - an application for patent, published under section 122(b), by another filed in the United States

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before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time nirro to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this tide, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - A patent issued on a process under paragraph (1)—
    - shall also contain the claims to the composition of matter used in or made by that process,
    - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means-

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- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism
  to-
  - express an exogenous nucleotide sequence,
  - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - (iii) express a specific physiological characteristic not naturally associated with said
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

#### Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
  - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
  - (3) The Director may require a certified copy of the original foreign application, specification, and

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drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patton of or an inventor's certificate shall be treated in this country in the same nuamer and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not let than 12 months after the date on which the provisional application is filed and if it contains or is amended to contain a specific reference to the provisional application application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a survatarge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
  - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
  - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a forcign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apoly to applications for patents.
- (g) As used in this section-
  - the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2)
    of this title; and
  - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

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Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this tale in an application previously flid in the United States, or a provided by section 363 of this title, which is flied by an inventor or inventors named in the previously flied application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandomment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and it is contains or is amended to contain a specific reference to the earlier filed application. No application that the entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted as such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment whith that time period as a waiter of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.